IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: March 7th, 2007

\+ **Company Petition No.53/2007**
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Sh. Satish Batra & Another ..... Petitioners
Through: Mr.Vibhu Bakhru, Advocate

Versus

Registrar of Companies & Another ..... Respondents
Through: Nemo.

CORAM :-
*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment?

2. To be referred to the reporter or not ?

3. Whether the judgment should be reported in the Digest?

ANIL KUMAR, J. (Oral)
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1. This is a petition under Section 633(2) of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, seeking an order excusing the petitioner from any liability for default as specified in Section 628 and 629A of the Companies Act, 1956 and seeking an order excusing the petitioners from any criminal liability and or prosecution.

2. The petitioners are the Directors of Vimal Plast (I) Pvt. Ltd. and in an

inspection under Section 209 of the Companies Act, 1956, it was observed that the Company has accepted huge amounts from Directors, shareholders, corporate bodies (Companies) and from public ever year since 1999 and no resolution of the Board at any point of time authorizing the management to receive the application money, was passed.

3. For various breaches committed, the show cause notice categorically spelt out that allotment of shares in a company could be done by the Directors in accordance with the provisions of the Companies Act and in accordance with the Article of Association of the Company and not by the Managing Director as the Managing Director was not authorized by Board Resolution to receive the application money for allotment of shares.

4. The show cause notice has also stated that no information regarding receipt of share application money was given to the Board nor the proposal for allotment was put up before the Board by the Management. It has also been contended that on a few occasions, the Board has allowed shares for a part amount but it was not brought to the notice of the Board as to how much amount has been received by the Management against the share application and thus the Management acted beyond their powers encroaching upon the powers of the Board of Directors.

5. A letter dated 19th January, 2006 seeking explanation from the Directors/Officers was sent regarding violation of various provisions of the Companies Act and a reply/explanation was furnished on 24th February, 2006 on behalf of the petitioners contending that the amount shown under the head share application money is in fact for current account transactions and as there is no provision to reflect the current account balances, the same has been reflected under the head 'share application money'.

6. The Registrar of Companies has taken note of the fact that if it was a current account and the money received was not application money then the figure shown in the balance sheets as on 31st March, 2001 to 31st March, 2005 as against application money would be a false statement and consequently the show cause notice dated 21st December, 2006 has been issued which is being challenged by the petitioner.

7. This is no more *res integra* that the powers under Section 633 of the Companies Act, 1956, are to be used sparingly and for the High Court to exercise its jurisdiction under the said Section, the persons concerned must show that they have acted honestly, reasonably and having regard to all the circumstances of the case, they should be excused. The petitioners are not

entitled to contend that they have acted honestly and reasonably, in case the violation are of statutory duties.

8. The learned counsel for the petitioner submitted that where the Board had allotted shares for a part of amount, later on the shares have been allotted for the entire amount, however, it has been done after the show cause notice had been given by the respondents. In the grounds raised in the petition, it is, however, contended that as against the share application money received by the company, the company as on date has allotted shares to *almost* all applicants meaning thereby still in some of the cases, the shares have not been issued for the entire application money which was received by the Directors. The defense which has been taken by the petitioners are also that unsecured loans were in fact friendly and temporary loans based on oral agreements and therefore no interest was payable thereon and the acceptance of share application money from various companies during the period 31st March, 2000 to 31st March, 2005 were current account transaction and as such no specific disclosure requirement has been prescribed in Schedule VI.

9. From the averments made and considering the facts and totality of circumstances, it is difficult to infer that the petitioners have acted reasonably

and that considering all the circumstances, it will be appropriate to excuse the petitioners.

10. Merely on the basis of the bald averments made by the petitioners, it will be difficult to infer that the amounts received were temporary loans based on oral agreements and no interest was payable thereon.

11. In the totality of facts and circumstances, it will not be appropriate to excuse the petitioners. The petitioners are also unable to show *prime facie* that they have acted in good faith and they have justifiable reasons to escape from the liability.

12. Taking into consideration the lapses committed by the petitioner, it also cannot be inferred that these are not statutory violations. Consequently there is no merit in the petition. The petition, therefore, is dismissed.

March 07, 2007 **ANIL KUMAR, J.**
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